

FILED & ENTERED

MAY 08 2013

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re

**JOHN WOODRUFF and DONNA  
ESTHER WASHINGTON-WOODRUFF,**

Debtors.

Case No. 2:12-bk-48104-RK

Chapter 7

**ORDER DENYING WITHOUT  
PREJUDICE MOTION FOR ORDER  
APPROVING LOAN MODIFICATION  
AGREEMENT OR FOR ORDER  
PERMITTING THE PARTIES TO ENTER  
INTO SUCH AGREEMENT**

[No Hearing Set]

On March 15, 2013, U.S. Bank, N.A., as Trustee for Holders of the Master Adjustable Rate Mortgages Trust 2007-2, filed a motion for order approving a loan modification agreement or for an order permitting the parties to enter into such an agreement. On the same date, with this motion, U.S. Bank filed a notice of hearing on the motion, which was in fact, according to its contents, a notice of opportunity to request a hearing on the motion pursuant to Local Bankruptcy Rule 9013-1(o).

On April 26, 2013, U.S. Bank filed a declaration re: entry of order without hearing pursuant to Local Bankruptcy Rule 9013(o), attesting that the 14-day deadline for requesting a hearing on the motion had passed without any party requesting a hearing

1 and that the motion should be granted and an order should be entered without a hearing  
2 on the motion.

3 On May 6, 2013, in response to U.S. Bank's declaration re: entry of order without  
4 hearing, debtors John Woodruff and Donna Esther Washington-Woodruff filed a motion  
5 to vacate order approving loan modification agreement entered on April 26, 2013, stating  
6 that they no longer wish to continue with the loan modification. However, no such order  
7 had been entered on April 26, 2013, or thereafter, on the motion of U.S. Bank.

8 Because debtors have filed a motion to vacate any order on the motion, indicating  
9 their opposition to the motion because they do not want to proceed with the loan  
10 modification, and the court has concerns whether it has subject matter jurisdiction to rule  
11 on the motion because it may be rendering an advisory opinion on the loan modification  
12 agreement and whether the loan modification agreement may constitute a reaffirmation  
13 agreement that does not need court approval pursuant to 11 U.S.C. § 524(c)(6) and (d),  
14 the court hereby denies the motion without prejudice. *In re Smith*, 409 B.R. 1, 2 (Bankr.  
15 D. N.H. 2009); *In re Wofford*, 449 B.R. 362, 364-365 (Bankr. W.D. Wis. 2011).

16 U.S. Bank may refile the motion by noticing the motion for hearing pursuant to the  
17 notice and hearing requirements of Local Bankruptcy Rule 9013-1(c)-(j) rather than the  
18 "negative notice" provisions of Local Bankruptcy Rule 9013-1(o). Such a refilled motion  
19 must be accompanied by a memorandum of points and authorities addressing the  
20 concerns raised by debtors in their motion to vacate and the court in this order.

21 IT IS SO ORDERED.

22  
23  
24 Date: May 8, 2013



Robert Kwan  
United States Bankruptcy Judge

## NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled **ORDER DENYING WITHOUT PREJUDICE MOTION FOR ORDER APPROVING LOAN MODIFICATION AGREEMENT OR FOR ORDER PERMITTING THE PARTIES TO ENTER INTO SUCH AGREEMENT** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

**I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **May 8, 2013**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

Robert S Lampl advocate45@aol.com  
Kahlil J McAlpin kahlil24@aol.com  
Jason M Rund (TR) trustee@srlawyers.com, jrund@ecf.epiqsystems.com  
United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov  
Kristin S Webb bknotice@rcolegal.com

☐ Service information continued on attached page

**II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

John Woodruff  
Donna Esther Washington-Woodruff  
4440 W. 58th Street  
Los Angeles, CA 90043

☐ Service information continued on attached page

**III. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below:

☐ Service information continued on attached page